

United States "

Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL SURETY COMPANY, a Corpora-
tion,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Western District of Washington,
Northern Division.

FILED

JUN 21 1923

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

Messrs. CALDWELL & LYCETTE, Attorneys for
Appellant,

1311 Alaska Building, Seattle, Washington.

THOS. P. REVELLE, Esquire, Attorney for Ap-
pellee,

310 Federal Building, Seattle, Washing-
ton.

PAUL D. COLES, Esquire, Attorney for Appellee,

305 Federal Building, Seattle, Washing-
ton. [1*]

United States District Court, Western District of
Washington, Northern Division.

No. 8524.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES H. UNVERZAGT,

Defendant.

WRIT OF SCIRE FACIAS.

President of the United States of America, to the
Marshal of the Western District of Washing-
ton:

WHEREAS, heretofore, to wit, on the ninth day
of May, 1924, a bail bond and recognizance in the

*Page-number appearing at the foot of page of original certified
Transcript of Record.

sum of Ten Thousand Dollars (\$10,000.00) was executed by the defendant Charles H. Unverzagt, as principal, and National Surety Company, as surety, which said bail bond and recognizance was conditioned for the appearance of the said defendant before the United States District Court for the Western District of Washington, Northern Division, at the courthouse in the City of Seattle, and from time to time and term to term thereafter, to abide by and obey a judgment and order of this Court previously entered against said defendant, discharging a writ of habeas corpus and ordering his removal to the United States District Court for the Western District of New York, and that thereafter, on the ninth day of May, 1924, the said bail bond and recognizance was filed in said court with the Clerk thereof.

AND WHEREAS, thereafter, to wit, on the 13th day of May, 1925, and at a proper term of said court, the said defendant being called to come into *to* court to answer, abide by and obey the order previously entered which had been appealed from and affirmed by the United States Circuit Court of Appeals for the Ninth Circuit, came not, but made default, whereupon, on motion of the United States District Attorney, it was considered by the Court that for the default aforesaid, the said defendant Charles [2] H. Unverzagt, as principal, and National Surety Company, as surety, forfeit and pay to the United States of America the sum of Ten Thousand Dollars (\$10,000.00) according to the tenor and effect of said recognizance and

property bond now in the hands of the Clerk of said court, unless they appear and show sufficient cause to the contrary.

YOU ARE, THEREFORE, HEREBY COMMANDED, to make known the contents of this writ to the said Charles H. Unverzagt and National Surety Company, and summon them to appear before said District Court of the United States, at a court to be held before the Western District of Washington, Northern Division, at the courthouse in Seattle on the 22d day of June, 1925, and to show cause, if any they have, why judgment *nisi* aforesaid should not be made absolute; and further, to show cause why they ought not to have execution issue against them for the amount due to the United States of America, upon said property bond, under the judgment aforesaid, together with any costs which may accrue by reason of proceedings to be had in the enforcement of said judgment, as by law provided.

HEREIN FAIL NOT.

WITNESS, the Honorable JEREMIAH NETERER, Judge of the United States District Court, at Seattle, in said District, on the 29th day of May, 1925.

[Seal]

ED M. LAKIN,

Clerk of the District Court of the United States,
Western District of Washington.

By S. M. H. Cook,

Deputy. [3]

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed writ of scire facias on the therein named National Surety Company by handing to and leaving a true and correct copy thereof with E. S. Turner, personally at Seattle, in said District on the 29th day of May, A. D. 1925.

E. B. BENN,
U. S. Marshal.
By A. B. Miller,
Deputy.

Western District of Washington,—ss.

I hereby certify and return, that on the 29th day of May, 1925, I received the within scire facias and that after diligent search, I am unable to find the within named defendant Charles H. Unverzagt within my district.

E. B. BENN,
United States Marshal.
By A. B. MILLER,
Deputy United States Marshal.

[Endorsed]: Filed Jun. 2, 1925. [4]

[Title of Court and Cause.]

AMENDED RETURN AND ANSWER TO
WRIT OF SCIRE FACIAS.

Comes now the National Surety Company, surety

on the bond of the above-named defendant, and making further answer and return to the writ of scire facias heretofore issued herein, files this amended answer to said writ, and for an amended answer admits, denies and alleges as follows, to wit:

I.

Said surety admits that on May 9th, 1924, a bail bond in the sum of \$10,000.00 was executed by said Chas. H. Unverzagt as principal and the National Surety Company as surety.

II.

Said surety denies that said bail bond was conditioned on the appearance of said Chas. H. Unverzagt in the aforesaid court from time to time and term to term to abide and obey the judgment and order of the aforesaid Court previously entered against him.

III.

Said surety denies that on May 13th, 1925, or at any other time, said Chas. H. Unverzagt was called to come in and obey an order previously entered against him; and denies that said surety or said Chas. H. Unverzagt made any default under said bond, whatsoever. [5]

For further answer to said writ of scire facias and as a first affirmative defense thereto, National Surety Company alleges as follows, to wit:

I.

That Chas. H. Unverzagt was arrested at Blaine, Washington, on May 7, 1924, on a fugitive from justice warrant, based upon two indictments against

him in New York, and the affidavit of Deputy United States Marshal Knizek; that habeas corpus proceedings were instituted in the United States District Court for the Western District of Washington, Northern Division, to test the legality of said arrest; that during the pendency of said habeas corpus proceedings, and said Chas. Unverzagt was again arrested by a United States Marshal, which said second arrest was based upon one of the New York indictments upon which said Chas. H. Unverzagt had been originally arrested at Blaine, Washington; that habeas corpus proceedings were instituted to test the legality of said second arrest; that in said second habeas corpus proceedings the writ was ordered discharged; that an appeal from said order was taken to the United States Circuit Court of Appeals for the Ninth Circuit; that said Chas. H. Unverzagt was given his liberty pending said appeal, on a property bond in the sum of \$10,000.00, in which said Chas. Unverzagt was principal and M. H. Casey and Agnes A. Pendleton were sureties; that said appeal was to test the legality of the arrest on one of the indictments said defendant had originally been arrested on, at Blaine, Washington; that said second arrest was on the same charge on which said Chas. H. Unverzagt was originally arrested; that said property bond superseded and took the place of the aforesaid bail bond previously executed by this surety. [6]

For further answer to said writ of scire facias, and as a second affirmative defense thereto, National Surety Company alleges as follows, to wit:

I.

That the writ of scire facias issued herein summons said principal and surety to show cause, if any they have, why they ought not to have execution issue against them under said "property bond"; that the bond intended to be forfeited is the property bond signed by Chas. H. Unverzagt as principal, and M. H. Casey and Agnes A. Pendleton, as sureties; that said writ of scire facias should have been directed to said Chas. H. Unverzagt and said M. H. Casey and said Agnes A. Pendleton; that the writ issued against this surety was issued by mistake.

For further answer to said writ of scire facias, and as a third affirmative defense thereto, National Surety Company alleges as follows, to wit:

I.

That at the time this surety executed a surety bond, with Chas. H. Unverzagt as principal and this surety as surety, the only order which had been issued, was an order dismissing the writ of habeas corpus; that particularly no order *or* removal had been issued; that said Chas. H. Unverzagt has never been ordered to do anything which he has not done; that said Chas. H. Unverzagt has not failed to obey any order which he was bound by said bond to obey.

For further answer to said writ of scire facias, and as a fourth affirmative defense thereto, National Surety Company alleges as follows, to wit:

I.

That the order on which said writ of scire facias was issued alleges that said Chas. H. Unverzagt failed to abide by the judgments of the Court previously entered; that said [7] Chas. H. Unverzagt has not failed to abide by any order of the Court previously entered; that said order for a writ of scire facias is null and void, and of no effect whatsoever; that the writ based upon said order is null and void and of no effect whatsoever.

WHEREFORE having made its return to the writ of scire facias issued herein, and having fully answered the same, and having shown cause why the judgment *nisi* aforesaid should not be made absolute and why execution should not issue against the National Surety Company for the amount claimed in said writ of scire facias, the National Surety Company prays that judgment absolute be not rendered against it, and that it be relieved from any and all liability under said bond, and from any and all costs accruing thereunder and that said writ of scire facias be discharged.

JOHN F. DORE,

CALDWELL & LYCETTE,

Attorneys for National Surety Company.

United States of America,
Western District of Washington,
Northern Division,—ss.

John P. Lycette, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the National Surety Company, a corporation, and makes this verification for and on behalf of

said National Surety Company for the reason that it is a foreign corporation and that there is no officer thereof within the State of Washington upon whom service of process may be had; that he has read the foregoing return to writ of seire facias; knows the contents thereof and believes the same to be true.

JOHN P. LYCETTE.

Subscribed and sworn to before me this 22d day of March, 1927.

[Seal] B. A. NORTHROP,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Received a copy of the within
——— this 24 day of March, 1927.

THOS. P. REVELLE,
Attorney for ———.

[Endorsed]: Filed Mar. 24, 1927. [8]

[Title of Court and Cause.]

WAIVER OF JURY.

Comes now the National Surety Company, and waives any right it might have to a jury trial herein.

NATIONAL SURETY COMPANY.

By CALDWELL & LYCETTE,

Its Attorneys.

O. K.—PAUL D. COLES,

Asst. District Attorney.

[Endorsed]: Filed Jun. 13, 1927. [9]

United States District Court, Western District of
Washington, Northern Division.

No. 8524.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES H. UNVERZAGT,

Defendant.

JUDGMENT.

It appearing to the Court from the records and files herein and from the evidence adduced that on the 11th day of May, 1925, the mandate of the Circuit Court of Appeals for this Circuit was entered, affirming the decision of the District Court, and directing that the defendant render himself amenable to the orders of the District Court; thereafter, on the 13th day of May, 1925, the above-named defendant Charles H. Unverzagt was duly called into this court to abide the orders of this court, and that when so called said defendant Charles H. Unverzagt defaulted and failed to appear, and that he was duly and regularly summoned from the door of said courtroom three times to appear and answer to said mandate, and again failed to appear, and that thereafter, to wit, on the 13th day of May, 1925, the appeal and supersedeas bond which was executed by the said defendant Charles H. Unverzagt, in the sum of Ten Thousand Dollars (\$10,000.00), which said appeal and supersedeas

bond was conditioned that if the said defendant Charles H. Unverzagt shall diligently prosecute said writ of error, and shall render himself amenable to all orders which said Circuit Court of Appeals shall make in the premises, and to all process ordered to be issued by said Circuit Court of Appeals, and shall not leave the jurisdiction of this court without permission being first granted, and shall render himself amenable to any and all orders made or entered by the District Court of [10] the United States for the Western District of Washington, Northern Division, was upon motion of the United States Attorney, duly forfeited, and judgment *nisi* thereupon entered defaulting said appeal bond; that thereafter on the 29th day of May, 1925, a writ of scire facias was duly issued out of this court, commanding the said Charles H. Unverzagt, as principal, and the National Surety Company as surety, to appear before this court on the 22d day of June, 1925, to show cause why judgment *nisi* should not be made absolute, and further, to show cause why they ought not to have execution issue against them, and each of them, for the amount due to the United States of America upon said appeal bond, under the judgment as aforesaid, together with any costs which may accrue by reason of the proceedings to be had in the enforcement of said judgment as by law provided, and that the said defendant Charles H. Unverzagt could not be found, and that service was effected on the said National Surety Company, surety, and that said writ has been duly returned into this

court by the United States Marshal for said district, with his return thereon as aforesaid; and an answer to the said writ was regularly filed by the National Surety Company, and on the 25th day of May, 1927, the matter was regularly brought on for hearing before the undersigned, one of the Judges of the above-entitled court for the Western District of Washington, the United States of America appearing by Thomas P. Revelle, United States Attorney, and Paul D. Coles, Assistant United States Attorney, and the National Surety Company appearing by Hugh Caldwell and John P. Lycette, its attorneys; and said cause came on regularly for trial and evidence having been introduced and argument heard, and the Court being fully advised in the premises, it is by the Court,

ORDERED AND ADJUDGED, that the said judgment *nisi* entered herein on the 13th day of May, 1925, forfeiting said appeal bond, and declaring that the said defendant Charles H. Unverzagt, as principal, and the National Surety Company, as surety, forfeit and pay to the United States of America the sum of Ten Thousand [11] Dollars (\$10,000.00), according to the tenor and effect of said bond, be made absolute; and it is further

ORDERED that the Clerk of the above court be, and he is hereby, authorized and directed to issue writ of execution against the property of the National Surety Company, surety upon said appeal bond for the sum of Ten Thousand Dollars (\$10,000.00), together with all accrued costs herein to be taxed in the sum of ——— dollars, and all

costs which may accrue by reason of the proceedings to be had in the enforcement of said judgment, as by law provided. Deft. Surety Co. *xcepts.*

Done in open court this 9th day of Mar., 1928.

JEREMIAH NETERER,
United States District Judge.

[Endorsed]: Filed Mar. 9, 1928. [12]

[Title of Court and Cause.]

PETITION FOR NEW TRIAL.

Comes now the National Surety Company, defendant in the writ of scire facias issued herein, and petitions the Court for a new trial upon the following grounds, to wit:

1. Irregularity in the proceedings of the Court and abuse of discretion preventing this defendant from having a fair trial; and error in law occurring at the trial, in that the Court erred

(a) In sustaining the Government's oral demurrer to the amended answer;

(b) In denying defendant's motion for nonsuit;

(c) In entering judgment for the plaintiff; and refusing to enter judgment for defendant.

2. Insufficiency of the evidence to justify the decision, in that:

(a) It appears from the evidence and the Clerk's docket in this cause that no order of this Court was previously entered herein discharging the writ of habeas corpus and ordering the defendant's removal to another district;

supposed to have been filed in this court on the 9th day of May, 1924, and said mandate refers to said order; but the records and files herein disclose that no such order was at any time made and entered. That by reason of said facts, defendant made no default, and said bond was a nullity, and the writ of scire facias should be dismissed.

JOHN P. LYCETTE.

Subscribed and sworn to before me this 17 day of June, 1927.

[Seal] WILLIAM TRUSCOTT,
Notary Public in and for the State of Washington,
Residing at Seattle. [15]

[Endorsed]: Received a copy of the within this 17 day of June, 1927.

PAUL D. COLES,
Attorney for _____.

[Endorsed]: Filed Jun. 17, 1927. [16]

[Title of Court and Cause.]

ORDER DENYING PETITION FOR NEW
TRIAL AND REHEARING.

This matter having come on for hearing on the petition of the National Surety Company for a rehearing, and it appearing to the Court that a writ of habeas corpus was issued herein on May 6, 1924, and on May 7th the matter came on for hearing on the return to said writ, at which time the Court ordered the writ discharged and the defendant re-

moved, and the following correct entry was made in the Clerk's docket, to wit: "May 7, Ent. record hearing on writ. Writ to be discharged, appeal bond fixed at \$10,000.00 and order of removal granted in default of bail, and motion for stay of proceedings granted until A. M. Friday for entry of final order"; that petition for appeal was filed on May 9th, and order entered allowing the same; and it further appearing that all the parties treated said order and minute entry of May 7th as a final order, and the Court being of the opinion that the petition for rehearing should be denied. Now, therefore,

IT IS HEREBY ORDERED that the National Surety Company's petition for new trial and rehearing be and the same is hereby denied.

To which the defendant, National Surety Company, excepts and exception is hereby allowed.

Done in open court this 28 day of June, 1927.

JEREMIAH NETERER,

Judge. [17]

O. K.—PAUL D. COLES,

Asst. U. S. Att.

[Endorsed]: Filed Jun. 23, 1927. [18]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To the UNITED STATES OF AMERICA, Plaintiff, and to THOS. P. REVELLE, United States Attorney, and PAUL D. COLES and DAVID L. SPALDING, Assistant United States Attorneys, Its Attorneys:

You, and each of you, will please take notice that the defendant, National Surety Company, in the above-entitled cause, has appealed, and does hereby appeal, to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain judgment entered in the above-entitled court and cause on the 9th day of March, 1928, and from the whole and every part thereof.

Dated this 21st day of April, 1928.

CALDWELL & LYCETTE,
Attorneys for National Surety Company.

Copy received this 23 day of April, 1928.

PAUL D. COLES,
United States Attorney.

[Endorsed]: Filed Apr. 23, 1928. [19]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

Now comes the defendant, National Surety Company, and files the following assignments of error upon which it will rely on its prosecution of the ap-

peal in the above-entitled cause from the decree made by this Honorable Court on the 9th day of March, 1928.

1. That the United States District Court for the Western District of Washington, Northern Division, erred in sustaining plaintiff and respondent's demurrer to the defendant's answer.

2. That the above-entitled court erred in granting judgment for the plaintiff and respondent.

3. That the above-entitled court erred in refusing to grant judgment for the defendant and appellant.

4. That the above-entitled court erred in refusing to grant the defendant and appellant's petition for a new trial.

WHEREFORE, appellant prays that said judgment be reversed, and that the United States District Court for the Western District of Washington be ordered to enter a judgment and order reversing said decision in said cause.

CALDWELL & LYCETTE,
Attorneys for Defendant, National Surety Company.

[Endorsed]: Filed Apr. 23, 1928. [20]

[Title of Court and Cause.]

SUPERSEDEAS AND COST BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, the National Surety Company, a corpora-

tion, appellant herein, as principal, and the New York Indemnity Company, a corporation organized under the laws of the State of New York, authorized to transact the business of surety in the State of Washington, and in the District of Washington, as surety, are held and firmly bound unto the United States of America, plaintiff herein, in the full and just sum of Twelve Thousand (\$12,000.00) Dollars, well and truly to be paid, we bind ourselves and our, and each of our, heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 23d day of April, 1928.

The condition of this obligation is such that

WHEREAS, the above-named plaintiff, United States of America, on the 9th day of March, 1928, in the above-entitled court and action, recovered judgment against the defendant above named in the sum of Ten Thousand (\$10,000.00) Dollars; and

WHEREAS, the above-named principal, National Surety Company, a corporation, has heretofore given due and proper notice that it appeals from said decision and judgment of said District Court, to the United States Circuit Court of Appeals for the Ninth Circuit.

NOW, THEREFORE, [21] if the said principal, the National Surety Company, a corporation, shall pay to said plaintiff and respondent, the United States of America, all costs and damages that may be awarded against said National Surety Company, a

corporation, on said appeal, and shall prosecute its said appeal to effect, and answer all costs if it fail to make good its plea, and shall satisfy and perform the judgment and order appealed from, in case it shall be affirmed, and shall satisfy and perform any judgment or order which the said United States Circuit Court of Appeals for the Ninth Circuit may render or make, or order to be rendered or made by said United States District Court for the Western District of Washington, Northern Division, then this obligation to be void, otherwise to remain in full force and effect.

NATIONAL SURETY COMPANY.

[Seal] By JOHN P. LYCETTE,
Its Atty.

NEW YORK INDEMNITY COMPANY.

[Seal] By (Illegible Signature).
J. GRANT,
Resident Asst. Secretary.

The above supersedeas and cost bond on appeal is hereby approved as to form and amount.

JEREMIAH NETERER,
United States District Judge.

O. K.—PAUL D. COLES,
Asst U. S. Atty.

[Endorsed]: Filed Apr. 23, 1928. [22]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING JUNE 11, 1927, TO FILE BILL OF EXCEPTIONS.

This matter having come on regularly for hearing on the motion of the National Surety Company for an order extending the time for filing a bill of exceptions in the above-entitled matter, until Saturday, June 11th, and it appearing that there is no objection thereto,

Now, therefore, IT IS HEREBY ORDERED that the time for filing a proposed bill of exceptions in this cause be, and the same is hereby extended to and including Saturday, June 11th, 1927.

Done in open court this 8th day of June, 1927.

JEREMIAH NETERER,

Judge.

O. K.—PAUL D. COLES,
U. S. Attorney.

[Endorsed]: Filed Jun. 8, 1927. [23]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that heretofore, to wit, on the 13th day of June, 1927, this cause came on regularly for trial before the Honorable Jeremiah Neterer, one of the Judges of the above court, sitting without a jury, a written waiver of trial by

jury having been filed as required by law; the plaintiff appearing by Thos. P. Revelle and Paul D. Coles, its attorneys, and the National Surety Company appearing by Hugh M. Caldwell and John P. Lycette, its attorneys, and the defendant, Charles H. Unverzagt, not appearing.

Thereupon the following proceedings were had and testimony taken, to wit:

Thereupon Paul D. Coles, as counsel for the Government stated that in the Unverzagt case the Government was ready; that he wished to interpose a demurrer to the answer of the National Surety Company, he having stated that no written demurrer was on file. Counsel for the defendant stated that he had no objection to the demurrer being made, at this time, or orally, and suggested that it would be best to have the case tried on the evidence. The Court thereupon stated that the matter could have been disposed of upon motion, but proceeded to consider the demurrer, and asked what the record showed as to whether or not [24] the defendant was called in May, 1925, to which the Clerk responded that forfeiture was made on May 13th, 1925, according to the docket. Thereupon Mr. Coles offered in evidence the bond in the case, and on being asked by the Court what he had to say on the demurrer, replied: "I have to say this, your Honor, that the amended answer set up by the National Surety Company I believe in no way constitutes a defense to this bond or to the forfeiture."

Thereupon argument was made by counsel for the defendant. At the end of the argument the oral

demurrer interposed by counsel for the Government was sustained by the Court, to which an exception was taken, and allowed by the Court. The Court stated that in making the ruling on the demurrer, the Court takes judicial notice of the fact,—as to the first affirmative defense, that the defendant was not called upon the 13th day of May, 1925—that the record does show that he was called at that time, so there is nothing in that defense.

Thereupon counsel for the defendant asked if the Court took judicial notice of what the record shows, and the Court replied “Yes.”

Thereupon counsel for defendant stated that defendant elected to stand on its answer. Demurrer was sustained and exception allowed.

Thereupon counsel for the Government asked that the forfeiture be made absolute; and counsel for defendant again stated that it elected to stand on the answer and take *and* exception. The Court thereupon asked if there was anything else to be offered, and counsel for the Government stated that that was all. The Court thereupon ordered that the forfeiture be made absolute, and that an order be prepared and submitted. [25]

Thereupon counsel for the defendant asked how the matter had been disposed of, whether on the demurrer or the evidence; to which the Court replied that counsel for the Government had introduced in evidence the bond, and the Court stated that he decided the case on both the evidence and the demurrer, that he ruled on the demurrer first and the evidence afterwards, the record being be-

fore him. To which an exception was taken as to both rulings.

This bill of exceptions contains in substance all the testimony offered in this case.

The National Surety Company prays that this, its bill of exceptions, may be allowed, settled and signed.

CALDWELL & LYCETTE,
Attorneys for National Surety Company.

Settled and allowed this 26 day of Sept., 1927.

JEREMIAH NETERER,
Judge.

Copy of bill of exceptions received this 11 day of June, 1927.

THOS. P. REVELLE,
Attorneys for Plaintiff.

[Endorsed]: Lodged Jun. 11, 1927. [26]

[Title of Court and Cause.]

BAIL BOND.

KNOW ALL MEN BY THESE PRESENTS, that we, Charles H. Unverzagt, as principal, and National Surety Company, as surety, are held and firmly bound unto the United States of America, in the penal sum of Ten Thousand (\$10,000.00) Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 9th day of May, 1924.

WHEREAS, the said Charles H. Unverzagt filed an application for a writ of habeas corpus in the District Court of the United States for the Western District of Washington, Northern Division, Cause No. 191-C., which said writ was discharged and petitioner ordered removed to the District Court of the United States for the Western District of New York, after hearing on the 7th day of May, 1924, by the Honorable Jeremiah Neterer, United States District Judge, and said petitioner was remanded to custody of the United States Marshal for the Western District of Washington;

AND WHEREAS, said Charles H. Unverzagt prayed for and was allowed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from said order discharging the writ of habeas corpus and said order of removal, and it was further ordered that pending such appeal to the United States Circuit Court of Appeals for the Ninth Circuit that he should be admitted to bail in the sum of Ten Thousand (\$10,000.00) Dollars for his appearance and surrender in the event said judgment is affirmed.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Charles H. Unverzagt shall appear, either in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said court, and shall prosecute his appeal and shall abide by and obey the orders made by the

United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of the judgment and decree appealed from as said Court may direct if the judgment and order against him shall be affirmed or the appeal is dismissed; and shall abide by and obey all orders made by said Court or by said District Court, provided the judgment and order against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then this obligation shall be null and void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 9th day of May, 1924.

CHARLES H. UNVERZAGT,

NATIONAL SURETY COMPANY,

(Illegible Signature),

Resident Vice-President.

[Seal]

Attest: J. GRANT,

Resident Assistant Secretary.

O. K.—C. T. McKINNEY,

Asst. U. S. Atty.

Approved.

NETERER,

Judge.

[Endorsed]: Filed May 9, 1924. [27]

[Title of Court and Cause.]

ORDER FOR WRIT OF HABEAS CORPUS.

Now on this 6th day of May, 1924, this cause comes on for hearing with Glen Madison and F. C. Reagan appearing for petitioner and John A. Frater for the Government. The petition herein having been presented to the Court, IT IS ORDERED that a writ of habeas corpus be issued herein directed to the marshal, returnable Wednesday, May 7, 1924, at 2 o'clock P. M.

Journal No. 12, page 189. [28]

[Title of Court and Cause.]

HEARING ON PETITION FOR WRIT OF
HABEAS CORPUS.

Now on this 7th day of May, 1924, this cause comes on for hearing on petition for writ of habeas corpus which is argued and writ will be discharged. Bond on appeal is fixed at \$10,000.00 and an order of removal is granted in default of \$10,000 bail. Motion to stay proceedings is granted to Friday A. M. for entry of final order.

Journal No. 12, page 190. [29]

[Title of Court and Cause.]

DOCKET ENTRIES.

In the above-entitled and numbered cause at page 294 of Law Docket No. 10 the following appears:

FILINGS—PROCEEDINGS.

Date.

Month. Day. Year.

- May 9, 1924. Filed cert. copy order removing cause from Bellingham to Seattle.
- May 9, 1924. Filed petition. Appearance.
(Transferred from Bellingham.)
- May 6, 1924. Ent. record hearing petition for writ of habeas corpus (at Bellingham)—Granted.
- May 6, 1924. Issued writ of habeas corpus returnable May 7, 2 P. M. and cert. copy.
- May 7, 1924. Ent. record hearing on writ—writ to be discharged; appeal bond fixed at \$10,000.00 and order of removal granted in default of bail, and motion for stay of proceedings granted until Friday A. M. for entry of final order.
- May 7, 1924. Filed marshal's return to writ.
- May 9, 1924. Filed memorandum decision on petition for writ of habeas corpus. Writ discharged.

- May 9, 1924. Filed warrant of removal. (Styled order of removal.)
- May 9, 1924. Filed petition for appeal. Assignment of errors.
- May 9, 1924. Filed and entered order allowing appeal and fixing bond \$10,000.00.
- May 9, 1924. Filed and entered appeal bond (Nat'l Surety Co.) \$10,000.00.
- May 9, 1924. Issued citation. [30]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please prepare record on appeal consisting of—

1. Writ of scire facias.
2. Amended return to writ of scire facias.
3. Petition and affidavit for new trial,
3. Order denying new trial.
4. Waiver of jury.
5. Judgment.
6. Order extending time for bill of exceptions.
7. Bill of exceptions with exhibits attached.
8. Citation on appeal.
9. Assignments of error.
10. Notice of appeal.
11. Supersedeas bond on appeal.
12. All minute and docket entries of May 6, 7, 9, ' 1924.
13. This praecipe.

CALDWELL & LYCETTE,
Attys. for Appellant.

NOTICE.

Attorneys will please indorse their own filings,
Rule 11.

[Endorsed]: Filed May 12, 1928. [31]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 31, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, at Seattle, and that the same constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees

and charges incurred and paid in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [32]

Clerk's fees (Act Feb. 11, 1925) for making record, certificate or return, 61 folios, at 15¢	\$9.15
Certificate of Clerk to Transcript of Record, with seal50
	<hr/>
Total	\$9.65

I hereby certify that the above cost for preparing and certifying record, amounting to \$9.65, has been paid to me by the attorney for appellant.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 17th day of May, A. D. 1928.

[Seal]

ED. M. LAKIN,
Clerk United States District Court, Western District of Washington.

By S. E. Leitch,
Deputy. [33]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.

To the UNITED STATES OF AMERICA, Plaintiff, and to THOS. P. REVELLE, PAUL D. COLES and DAVID L. SPALDING, Its Attorneys:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, to be held at the city of San Francisco, State of California, in the Ninth Judicial Circuit, on the 23d day of May, 1928, pursuant to a notice of appeal filed in the office of the Clerk of the above-entitled court, appealing from the final judgment signed and filed herein on the 9th day of March, 1927, wherein the United States of America is plaintiff and the National Surety Company, a corporation, is defendant and appellant; to show cause, if any there be, why the judgment rendered against the said appellant as in said notice of appeal mentioned should not be corrected and why justice should not be done to the parties in that behalf.

WITNESS the Honorable JEREMIAH NETERER, United States District Judge for the Western District of Washington, Northern Division, this 23 day of April, 1928.

[Seal]

JEREMIAH NETERER,
United States District Judge.

Copy received.

PAUL D. COLE,
Asst. U. S. Atty.

[Endorsed]: Filed Apr. 23, 1928. [34]

[Endorsed]: No. 5496. United States Circuit Court of Appeals for the Ninth Circuit. National Surety Company, a Corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed May 21, 1928.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.